IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

WP(C).No. 32607 of 2007(F)

AGAINST THE ORDER IN DRC 2102SIB/KZKD IN
OA.177/2004 of DEBT RECOVERY TRIBUNAL, ERNAKULAM

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PETITIONERS:

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1. O.K.KUNHABDULLA,
   OTHAYOTH HOUSE, KUTTIADI P.O., KOZHIKODE.

2. O.K.ABDUL SALAM, S/O. AYAMMED,
   OTHAYOTH HOUSE, KUTTIADI P.O., KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS:

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1. THE SOUTH INDIAN BANK LIMITED,
   HAVING ITS REGISTERED OFFICE AT TRICHUR,
   REPRESENTED BY ITS CHIEF MANAGER,
   KOZHIKODE MAIN BRANCH.

2. M/S. DYNA GROUP OF AGENCIES,
   M-33, MARKAZ COMPLEX, MAVOOR ROAD, KOZHIKODE.

3. P.P.NARAYANAN,
   PARTNER, DYNA GROUP AGENCIES, PARAYULLA PARAMBATH
   HOUSE, MARUTHONKARA P.O., KOZHIKODE DISTRICT.

4. SANDHYA, W/O. DINESH,
   PARTNER, DYNAL GROUP AGENCIES, RESIDING AT
   ARMISHES FLAT, GROUND FLOOR, ASHOKAPURAM,
   KOZHIKODE.

5. REMA BALAN, W/O. LATE M.BALAN,
   KOODAKENTAVIT HOUSE, P.O.CHOMBALA VIA,
   VADAKARA.

6. SINDHU, D/O. LATE BALAN,
KOODAKENTAVIT HOUSE, P.O.CHOMBALA VIA, VADAKARA.

7. RECOVERY OFFICER,
OFFICE OF THE RECOVERY OFFICER,
DEBT RECOVERY TRIBUNAL, ERNAKULAM.

R1 BY ADV.SRI.K.PRABHAKARAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.32607 of 2007-F

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Dated this the 2nd day of November, 2007.

JUDGMENT

1. Heard the learned counsel for the petitioners and the learned counsel for the first respondent.

2. Going by Ext.P1, two items of properties are to be put to sale for realisation of the amounts covered by a recovery certificate issued by the DRT. According to the petitioners, they were the guarantors for the transaction and Item No.1 was offered by them as collateral security and that Item No.2 belongs to the principal debtors. Going by the manner in which the upset prices have been fixed for both the items, it can be seen that the total

reserve price fixed by the Bank for both the items put together are lesser than the amounts due under the recovery certificate. Therefore, in so far as the Bank is concerned, it makes no distinction as to which property is put to sale in the first instance.

3. In the aforesaid circumstances, it is directed that items 1 and 2 will be sold as separate lots particularly when the description of those items in Ext.P1 would show that they do not lie contiguous. In doing so, Item No.2, if it belongs to the principal debtors, would be put to auction at the first instance. The petitioners will be at liberty to participate in the auction and if they bid the same, they would also be entitled to satisfy the entire recovery certificate when Item No.1 is put to sale, thereby saving their property (Item No.1) from distress action in the enforcement of recovery proceedings. If they would then be entitled to seek reimbursement from the principal debtors, neither this judgment nor the proceedings before

the DRT or before the Recovery Officer would stand against them and if they would be entitled to agitate it in accordance with law before the competent court. These directions are without prejudice to the contentions of the other defendants in the O.A.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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